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Volume 49, Number 2  
Winter 1999



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## DEDICATION

### WORDS OF APPRECIATION ABOUT A LEGAL COLLEAGUE AND CONSTITUTIONAL SCHOLAR

*Hon. Nathaniel R. Jones<sup>†</sup>*

To pen this salute to Professor Ted Mearns, a friend, is a profound honor, for he is the embodiment of what I consider to be noble about the legal profession. As an esteemed member of the academy, and as a lawyer, Ted Mearns has personally engaged in the unending pursuit of means to make the law relevant for all human beings. Significantly, as a law professor, his influence on prospective lawyers has reached beyond the theoretical. He has been able to gift his students with the richness of the experience gained by his practical application of legal and equitable principles to real world problems.

During my years as a civil rights lawyer engaged in trying to vindicate the rights of historic victims of racial discrimination, I became struck by how little lawyers and judges understood the 14th Amendment. Upon joining the judicial branch, and consequently experiencing the increased opportunities to interact with the academy, a reason for the deficit in knowledge about the 14th Amendment's history and purpose became evident. I began to attribute it, more and more, to the seemingly dismissive and superficial way in which racial precepts have impacted upon and distorted our institutions. No heed was paid to the lessons taught by the jurisprudence of the late Charles Hamilton Houston and his mentee, Thurgood Marshall.

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<sup>†</sup> Judge for the Sixth Circuit Court of Appeals.



When I met Ted Mearns, however, I recognized a professor who did not fit my "profile" of constitutional law professors flawed by this deficiency of knowledge and historical insight. I became aware of his probing mind and his ability to marry theory with real world problems when he signed on to assist the court in the Cleveland school desegregation case of *Reed v. Rhodes*. His role in distilling mountains of facts and measuring them against constitutional standards was of invaluable assistance to the parties and the court. Without question, that experience enhanced his ability to impart to his students constitutional realities.

I refer specifically to this instance, though there are others I could add, because Professor Mearns' students, as they enter the profession, will be better suited to assist clients and the public, to whom lawyers also owe a duty, to better understand the role and justification of legal remedies for constitutional wrongs that have contorted American institutions.

Thanks to Professor Mearns, the cadre of lawyers prepared to help the nation to more effectively meet contemporary challenges stemming from a variety of discriminations (whether racial, ethnic, gender, age or resulting from disabilities) have increased.

For that we are all in his debt.

## TED MEARNS: COLLEAGUE, TEACHER, FRIEND

*Gerald Korngold<sup>†</sup>*

In his twenty-four years at Case Western Reserve University, Professor Edward ("Ted") A. Mearns, Jr. was a source of inspiration and wisdom to his colleagues, students and members of the larger community. His dedication as a teacher and public citizen are remarkable.

Ted joined the faculty of our law school in 1974 and served the law school and University with great distinction. He was University Vice President for Undergraduate and Graduate Studies from 1984 to 1987 and Vice Dean of the School of Medicine from 1980 to 1984. Ted also held important leadership positions on our faculty, most recently serving as Director of the Frederick K. Cox International Law Center. During his years in legal education, Ted published numerous law review articles, including five pieces in the *Virginia Law Review*. Ted has also been an ambassador for American legal education, having taught at the University of Rome, University of Messina, University of Milan, Volgograd University, University of Rijeka (Croatia) and the University of Fribourg (Switzerland). Ted currently continues his engagement in international legal issues as Academic Dean of the World Law Institute.

Ted has benefited his colleagues and all who know him in other ways as well. We have all gained from his advice, drawing on his wisdom and experience with human behavior and institutions. His life as a public citizen and his contributions to the larger community provide us with an important role model. Among many activities, he served as consultant to the U.S. Commissioner of Education, consultant to the United States Commission on Civil Rights and as the Court-Appointed Expert for the United States District Court of the Northern District of Ohio in connection with the historical Cleveland School

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<sup>†</sup> Dean and Everett D. and Eugenia S. McCurdy Professor of Law, Case Western Reserve University School of Law

desegregation suit. Ted's commitment to equal justice under the law is reflected in his many good works.

These are but a few of Ted's many accomplishments. But perhaps his greatest achievement is the profound impact that this excellent and committed teacher had on his many students during his years at Case Western Reserve University School of Law and the other schools at which he taught. Over the years, Ted guided his students in their search for knowledge and instilled in them a commitment to justice and the legal system. The written comments of his students on anonymous teaching evaluations for Ted's Constitutional Law class in the spring of 1997 (Ted's last semester at the law school) indicate the profound effect Ted had on his classes. A few of the many laudatory comments are illustrative. One student praised Ted's "knowledge, concern, and commitment to instilling competence and a sense of justice into his students." Another student wrote that "Ted's concern for the students is genuine," while another concluded: "I walked into your class knowing nothing about the Constitution and I walked out of class willing to discuss Constitutional Law with any scholar."

The students recognized that they were being taught by a special person. One student described Ted as an "incredible teacher, better person." Another student penned a comment (one of my favorites in twenty years of reading student evaluations of teachers): "one great dude!" Still another summed up: "thank you for your dedication this semester and during your entire career." Another simply wrote, "Godspeed."

Ted Mearns has had a profound impact on Case Western Reserve University School of Law and the larger community. We salute Ted Mearns—colleague, teacher, friend.



# EDWARD A. (TED) MEARNS, JR.— TEACHER, COLLEAGUE, FRIEND AND ADVOCATE FOR JUSTICE

*Melvyn R. Durchslag<sup>†</sup>*

It was, I think, in late March or early April, 1998, that a student asked me whether it was true that Ted Mearns was going to retire at the end of the academic year. Like most such rumors, I dismissed it out of hand. Wrong again! Ted had indeed decided to retire from teaching after forty years. Like Cal Ripkin, who took himself out of the Baltimore Oriole's starting lineup on September 20, 1998, long before he had to do so, Ted felt that after forty years, "the time was right." So too, the time is right for the Law Review to dedicate this issue to a person who has given to his students, to his colleagues, and to his community, not just what most of us give—our intellectual self—but his emotional self as well. It is quite amazing that he had so much left to give to his family.

I consider myself lucky. I have benefited and hopefully will continue to benefit from Ted's teaching, his collegiality and his friendship. There are, of course, others for whom Ted was also a teacher, colleague and friend. Indeed I would guess that after forty years of teaching at four major institutions, their numbers are quite large. But I can not speak for them. However, if they were and are as rewarded as I am from their association with Ted (as I suspect they are), they too will miss Ted's constant presence around the Law School.<sup>1</sup>

Ted came to the Law School several years after I had started. But whereas I was more a "rookie" than a full equity partner, Ted had already achieved what takes most of us a full career—United States Navy veteran, Professor of Law at the University of Virginia Law

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<sup>1</sup> I do not mean to have this sound like a eulogy. Ted has not departed—far from it. I see him rather regularly, certainly once or twice a week, picking up materials, dropping off completed matters for transcription or distribution, and generally conversing in the halls on the "second floor."

School (starting at the ripe old age of 28), Fulbright Scholar, Associate Dean for Academic Affairs at the University of Virginia Law School, Professor of Law at Northwestern University School of Law, Dean and Professor of Law at the University of Cincinnati School of Law and Professor of Law and Psychiatry at the University of Cincinnati School of Medicine.

I can not recall whether Ted's arrival at the Law School coincided with then Dean Lindsey Cowen's maybe ill-advised decision assigning me to teach Constitutional Law or whether that assignment took place a year or two after. Whichever, it was then that I came to know Ted Mearns not only as a colleague but as a teacher as well. It was Ted who guided me through the first several years of teaching what, to this day, I think is the most intimidating course in the curriculum. It was Ted who guided me through the most intimidating casebook (next to Hart & Weschler, *Federal Courts*) in legal education, Gerald Gunther's *Constitutional Law*. And it was Ted who convinced me, as teacher to teacher, that whatever my views of the Court as an institution or its rulings in individual cases, the classroom demanded that I struggle to identify the conceptual strands which bind cases together rather than become preoccupied with those ideological differences which fracture the Court and allow some to claim that Constitutional Law is an oxymoron. Ted continually reminded me that Constitutional Law could be understood to be quite principled. He maintained that there exist certain apolitical, historically accepted normative principles (albeit often found only in the "penumbras, formed by emanations"<sup>2</sup>) that allow us to distinguish the correct from the incorrect and to assess the Court's performance according to determinate, neutrally acceptable, if not "objective," criteria. He would insist that it was my responsibility to discover what those principles were and convey them to my students. More important, he would remind me that I could not allow my students to take the easy way out—to write off Supreme Court opinions as only "politics." He believes strongly that lawyers, because of their training, have a special obligation to inform the ongoing political debate regarding the workings of our political system and the constraints that the Constitution imposes upon that system. And that in turn imposes a special obligation on those who teach Constitutional Law to do so in a way that prepares students to be in the vanguard of our ongoing constitutional discourse. Ted Mearns, the teacher, struggled mightily to fulfill that special obligation and to help others to do so as well.

Ted, however, is more than my teacher; he was and remains, in his emeritus status, my colleague. I emphasize this because Ted believes that being a colleague means more than the dictionary defini-

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<sup>2</sup> *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).



tion.<sup>3</sup> For Ted, being a member of a faculty meant assuming significant tasks simply because the collective body demanded it. It did not matter to Ted that the tasks assigned him at best were distracting and at worst required him to put his own career objectives "on the back burner." Ted did what the institution asked without questioning and without "griping," knowing full well that in the world of academe these efforts are never rewarded.<sup>4</sup> For those of us who, like me, served limited periods in administrative posts or on hard working committees and special task forces, Ted was our support. He would give of his valuable time not only as a direct participant but as one to whom you could go informally for specific advice and counsel or simply to chat, unwind or "blow off steam." I do not know what this cost him other than much needed sleep,<sup>5</sup> but it did cost him. In short, Ted was not only instrumental in making this school work, but was indispensable in ensuring that its atmosphere remained "collegial."

I will only briefly comment on my friendship with Ted Mearns. Friendship is a very difficult thing to describe. It is not made any easier by knowing that what I say about it will be published and maybe even read. In part, friendship includes the professional collegiality described above. But friendship is more. We all go through difficult times and experience personal setbacks. But we nevertheless try to maintain some semblance of a normal routine. In order to do so we need people in our professional environment to whom we can turn for personal counsel and comfort. I (and others) could always count on Ted to be that person. Maybe it was because Ted was associated with the department of Psychiatry at the University of Cincinnati Medical School that many of us looked upon him as the "resident shrink." The truth, however, is that Ted is an unselfish, giving person. His "resident shrink" status was only a by-product of his unselfish qualities. Moreover, he was not only a friend to many of his faculty colleagues but also to his students as well. Indeed few, if any, of my colleagues can claim the number of true friendships with former students that Ted can claim.

Finally, and maybe most significantly, Ted is more than a teacher, colleague and friend. Ted is an inspiration to all who choose to look at how he has lived his life according to his professed ideals. He is passionately committed to justice and equality.<sup>6</sup> Indeed, it is at

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<sup>3</sup> The dictionary defines a colleague simply as "an associate." *RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE* (2d unabridged ed. 1987).

<sup>4</sup> Quite the contrary. As one of my colleagues often remarks, "no good deed goes unpunished."

<sup>5</sup> I often asked him, almost in wonderment, when he had time for all of the other things, academic and personal, in his life. He would inevitably respond that his day began somewhere between 4:30 and 5:00 A.M. and often did not end until after 10:00 P.M.

<sup>6</sup> This is not in any way to marginalize his commitment to his large family (nine children, 27—that is correct, 27—grandchildren, and, as of this writing, maybe a Whippet puppy). On the other hand, it is hard to ignore his children's career choices and personal commitments, to

the core of Ted Mearns the person. Ted "cut his legal teeth" at a time when injustice and inequality were evident for all to see. Unlike today, there was no ambivalence in 1958 Virginia about whether inequality was rampant and systemic or whether we could claim that the United States even approached a just society. It was and we could not! As Judge Jones so eloquently describes, Ted openly and forcefully fought that inequality and injustice at a time and in a place where to do so was, to put it mildly, not looked upon with favor. Times, however, have changed. Discussions of justice do not occur very often in law schools today. And when justice is discussed it is done so under a different name and with a different focus. We no longer concentrate on our body politic (do *we* live in a just society? what can *we* do to correct injustices done to other human beings?). Rather we focus on the individual and her "liberty" (Are *my* desires and utilities constrained by inefficient, wealth decreasing and rent seeking government regulations?). Equality, too, has become for many of us "intellectuals," "an empty idea," devoid of any substantive content beyond the individual and her "equal" ability to pursue whatever it is that makes her happy.<sup>7</sup>

These views of the relationship between the individual and the state, so prevalent in legal education today, are unacceptable to Ted. This is not because Ted is a "politically correct liberal," whatever those terms may mean. Ted, for example, is a vocal opponent of a woman's right to terminate her pregnancy, viewing that right as excessively focused on the individual without proper recognition of the message it sends about the value society places on life, *any* life. It is too easy to attribute this view to Ted's strong religious convictions. Rather, because he has spent so much of his life fighting pervasive *societal* injustices and inequalities, Ted does not see justice or injustice or equality or inequality as linear concepts, solely focused on the individual. As a result, he has never been persuaded that the mere stroke of President Lyndon Johnson's pen in 1964 magically turned what was once the polity's problem and thus the polity's responsibility to correct, into a series of isolated, disconnected individual wrongs for which there is no collective responsibility to remediate. Nor has he accepted the argument that the government's efforts to correct racial and other social injustices and the inequalities that result from these injustices should be judged by the same criteria as other common law and statutory efforts to adjust rights and liabilities among competing individual economic claims. So what we lose with Ted's retirement even more than his teaching, his collegiality and his constant and friendly presence is his perspective—that justice and injus-

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say nothing of those of his wife, Pat. Whether or how much influence Ted had on those choices and commitments I can not say.

<sup>7</sup> Peter Westen, *The Empty Idea of Equality*, 95 HARV. L. REV. 537 (1982).



tice, equality and inequality and right and wrong have meaning beyond the satisfaction of individual desires and that all of us, in a collective sense, have an obligation to address injustice and inequality, even (heaven forbid) require individual sacrifice from "innocent people" in order to do so.

Ted's last class was, appropriately, Constitutional Law. Approximately ten minutes before the end of the hour, at least twenty-five of his colleagues, friends and students filed into the room and stood along the outer walls. We did not want to disrupt his class, even though we realized that we probably would do so (and we did, at least temporarily). We merely wanted to join in what we knew would be a heartfelt ovation. What struck me about that last class, however, was not the standing ovation received from his students (and us) nor the more generalized outpouring of affection and respect. Anyone who knew Ted or only sat in his classroom for a semester could have expected nothing less. Rather, I was left with his admonition to his students. He urged them to use their education and their talents not just to do well but to "do good." As platitudinous as this might sound to the cynic who does not know Ted, there was no ideology and no partisanship to his message. It was simply a call to his students to recognize the public responsibilities that their unique education imposed upon them. More of us should have been there.



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